

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-747

November 6, 2000

VERIZON NEW ENGLAND, INC.  
D/B/A VERIZON-MAINE  
Request for Approval of Affiliated Interest  
Transaction for the Transfer of Advanced  
Services Operations to a Structurally  
Separate Affiliate

ORDER APPROVING  
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Order we approve, subject to certain conditions, a reorganization of Verizon New England d/b/a Verizon-Maine, consisting of the creation of an affiliated interest, Verizon Advanced Data. We also grant other related approvals described below.

On September 1, 2000, Verizon-Maine filed a Request for Approval of a reorganization of an affiliated interest transaction for the transfer of its advanced services operations to a structurally separate affiliate under 35-A M.R.S.A. § 708. Verizon-Maine also filed requests for various related approvals under 35-A M.R.S.A., §§ 707, 1101 and 1104. Verizon-Maine stated that the transfer was required as a condition contained in the Federal Communications Commission's (FCC) recent approval of the merger between Bell Atlantic and GTE, which created Verizon Communications, the parent of Verizon-Maine. On October 27, 2000, the Company and the Office of the Public Advocate (OPA) submitted a Stipulation that resolves this matter. By this Order we accept the Stipulation and thereby approve the Company's various requests for approval.

**II. BACKGROUND**

As a condition of its approval of the merger of Bell Atlantic Corporation and GTE Corporation into Verizon Communications, the FCC required that Verizon provide "advanced services" (as the FCC defines that term) in all states through an affiliate that is structurally separate from the incumbent local exchange carriers owned by the merging entities. To comply with that condition, Verizon Communications created an affiliate, Verizon Advanced Data Inc. (VAD), which will provide advanced services that are currently being provide by Verizon-Maine. To complete the transition of advanced services to VAD, Verizon must obtain several approvals by this Commission. First, VAD

is an affiliated interest whose creation is a reorganization that requires Commission approval under 35-A M.R.S.A. § 708(2). Second, Verizon-Maine seeks approval under 35-A M.R.S.A. §§ 707 and 1101 to transfer to VAD certain regulated assets that are currently used to provide advanced services by Verizon-Maine; the Company must also transfer its embedded customer base to VAD, which also requires approval under section 707. Third, Verizon-Maine will withdraw its advanced services tariffs and discontinue the provision of advanced services (35-A M.R.S.A. § 1104).<sup>1</sup> Fourth, Verizon-Maine will enter into certain affiliated interest contracts and arrangements with VAD (35-A M.R.S.A. § 707). In its filing, Verizon-Maine sought approval to the extent necessary for each of these actions.

Verizon-Maine asserts that the requested transfer of its assets used in the provision of advanced services is in the public interest, because the amount of the assets to be transferred is relatively small, the transfer price is reasonable and there is no harm to ratepayers, consumers or competitors. The FCC ordered that advanced services be provided through a separate affiliate to ensure a level playing field for all potential providers of advanced services and to counteract any alleged potential for the incumbent LEC to degrade service or facilities needed by non-affiliated competitors. Thus, Verizon-Maine asserts that the transfer helps to promote competition for advanced services.

Verizon-Maine requested approval for the transfer to VAD of assets used in the provision of advanced services, specifically Frame Relay and ATM services. The Company provided a listing of all assets in Maine that are to be transferred, including their installed amounts and net book values (NBV). The plant and equipment consists of hardware and plug-in equipment that is located in various central offices throughout the state. The equipment to be transferred in Maine has an intrastate original cost of about \$8.2 million and an intrastate NBV of about \$6.6 million. The exact amount of the transferred equipment will be determined at the time of the transfer, which is expected to occur by year-end or early in 2001. The transfer will be accomplished through an Asset Purchase Agreement between Verizon-Maine and VAD, and the net book value will be used to account for the transaction. The value of the transferred equipment is important, because the amount of stock to be issued by VAD to Verizon-Maine will depend on the relative amount of equipment that Verizon-Maine transfers to VAD compared with the value of all equipment transferred by the other Verizon LECs.

FCC accounting rules, which have been incorporated into Chapter 210 of the Commission's Rules, require that the transfer of assets from a regulated utility (such as Verizon-Maine) to a non-regulated affiliate (such as VAD) be valued at the higher of net book value or market value. To determine the value that will apply to the transfer, Verizon retained the independent firm Mitchell & Titus, LLP to determine the fair market

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<sup>1</sup>In Docket No. 2000-625, we granted VAD authority under 35-A M.R.S.A. § 2102 to operate as a CLEC in Maine and approved its tariffs for the provision of advanced services.

value (FMV) of the equipment to be transferred. Mitchell & Titus employed various methods to calculate the FMV, and it found that in all cases the FMV of the equipment was less than the NBV. Therefore, the NBV will be used in calculating Verizon-Maine's contribution to VAD for equity accounting purposes.

After the asset transfer, Verizon will be required to process orders for VAD's advanced services operations and to provide VAD with other services to allow the continued provision of advanced services in Maine. The FCC specifically permitted such an arrangement in its approval of the Bell Atlantic/GTE merger, and it determined that certain joint activities, such as equipment installation and maintenance, would enhance competition in the advanced services market, because Verizon is required to provide comparable services to non-affiliates on a nondiscriminatory basis. Verizon-Maine and VAD have entered into a Master Services Agreement that will govern their post-transfer relationship. The Company requested that this agreement be approved pursuant to 35-A M.R.S.A. § 707(3).

Verizon-Maine customers who are presently being provided with advanced service under contracts with Verizon-Maine will have those contracts transferred to VAD, who in turn will continue to provide the advanced services under the same price, terms and conditions that are presently in place. The Company asserts that the transfer of customers will be virtually seamless to the customers. As part of this process, Verizon-Maine seeks approval under 35-A M.R.S.A. §1104 to discontinue its provision of intrastate advanced services once the asset transfer is complete, and to withdraw and cancel all tariff schedules related to the provision of advanced services.

VAD and Verizon-Maine are both wholly-owned subsidiaries of Verizon Communications, which in turn makes them affiliated interests of each other, according to 35-A M.R.S.A. §707. The creation of VAD is a reorganization that requires Commission approval under Section 708, unless otherwise exempted by the Commission. While the Affiliated Interest Stipulation approved by the Commission in Docket No. 86-224 exempts certain reorganizations of Verizon (formerly Bell Atlantic and NYNEX) from the Commission approval requirement, VAD is an affiliate created to provide services formerly provided by Verizon. Thus, the reorganization exemption contained in the 86-224 Stipulation does not apply, although Verizon asserts that such approval may not be necessary or required, because the reorganization that resulted in the creation of VAD was authorized by the FCC, and thus the commerce clause of the United States Constitution limits the Commission's approval authority. Nevertheless, the Company asserts that the creation of VAD promotes the public interest in Maine and should be approved by the Commission in any case. At a case conference, the Company also agreed that, regardless of whether federal actions might limit this Commission's approval authority, the Commission could attach reasonable conditions to its approvals, as long as those conditions did not conflict with any federal policies.

On October 27, 2000, after discussions among the parties and the Commission's Advisory staff assigned to this case, Verizon-Maine and the OPA filed a Stipulation that purported to resolve all issues involved in this docket. The Stipulation found that the proposed transfer of assets that are to be used by VAD in the provision of advanced services is in the best interests of Maine ratepayers and will promote the public interest. The only condition contained in the Stipulation explicitly preserves the Commission's ratemaking authority over the intrastate revenues, expenses and investments associated with the transfer of the assets described in the Company's Petition, and retains the Commission's ability to consider those items in a rate proceeding involving Verizon-Maine. The parties agree that approval of the Company's request shall neither expand nor curtail the Commission's ratemaking powers with respect to adopting such an adjustment in a subsequent proceeding. Therefore, the signatories recommend that the Commission approve the proposed transfer, and the Advisory staff also recommended that the Stipulation be approved.

### **III. DISCUSSION AND ORDER**

We have reviewed the application and related information submitted by the Company, and we find that the proposed asset transfer is not adverse to the public interest and will be approved. We also will approve all related affiliated interest transactions for which approval has been requested, and we will grant Verizon-Maine's request to discontinue its provision of advanced services when the asset transfer has occurred.

We note that Paragraph 5 of the Stipulation contains the provision that preserves the Commission's full ratemaking authority over the revenues, expenses and investments associated with the transfer. We view inclusion of this condition in the Stipulation as a recitation of the authority that the Commission retains in any event. While Verizon-Maine is currently operating under an Alternative Form Of Regulation (AFOR), and we expect that it will be doing so in the future as well, it is possible that at some point we may decide that a complete examination of the Company's revenue requirements is necessary. The condition simply preserves our ability to examine all of the intrastate revenues, expenses and investment of Verizon-Maine and of VAD. While the Stipulation reserves to the Company the right to argue that we should not examine or include VAD revenues, expenses or investments, it will not be able to assert that our acceptance of this Stipulation in any way reduced our legal authority to examine all aspects of the ratemaking implications of the transfer of the provision of advanced services to VAD. While we are approving the transfer of the assets to VAD, we are not necessarily approving for ratemaking purposes the value at which they are transferred, nor are we making any determination about how the revenues, expenses and investments of VAD might be treated in a future proceeding. All lawful options remain open should we decide to examine VAD's revenues, expenses and investments in a future proceeding.

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.